

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.12.2007

Coram :

THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN

and

THE HONOURABLE MRS.JUSTICE CHITRA VENKATARAMAN

Writ Appeal No.828 of 2002

Sellathal

Appellant/5th Respondent
in WP 9322/95

v.

1. The Director of Municipal Administration,
Chepauk, Chennai 600 005.

2. Dharapuram Municipality, represented
by its Special Officer, Dharapuram,
Erode District.

..Respondents/
Respondents 1 to 4 in
WP 9322/95

3. The Divisional Excise Officer,
Dharapuram, Erode District.

4. Namberumal Naidu

Respondent/
Petitioner in WP 9332/95

Writ Appeal filed against the order of a learned single Judge of this Court dated 08.03.2002 made in writ petition No.9322 of 1995.

WP 9322 of 1995 Prayer:to issue a writ of Mandamus or order or direction in the nature of a writ or any other appropriate writ direct the respondents 1 and 2 to utilise the lands in T.S.Nos.705/1,706,707 and 708 Kulathukunjai Road, Chitravuthampalayam Village, Dharapuram Taluk, Periyar District for the purpose of widening the road and for extension of drainage facilities and in the event as not utilising the lands to reassign the lands in T.S.Nos. 705/1,706,707 and 708 Kulathukunjai Road, Chitravuthampalayam Village, Dharapuram Taluk, Periyar District to the petitioner as per Board of Revenue Standing Order 90(32) and allow this writ petition with cost.

For Appellant : Mr.V.N.Mohanraj
For Respondents 1 & 3 : Mr.Edwin Prabhakar,
Government Advocate
For Respondent 2 : Mr.N.Subbarayalu

JUDGMENT

(Judgment of the Court was delivered by
K.RAVIRAJA PANDIAN, J.)

The appellant in the appeal is the fifth respondent in the writ petition. She got impleaded as such as the legal representative of the fourth respondent Pugazhenthir, her husband. The writ petition came to be filed by one Namperumal Naidu, the fourth respondent in the appeal, (hereinafter referred to as the writ petitioner) seeking for issuance of writ of mandamus directing respondents 1 and 2 to utilize the land in survey No.705/1, 706, 707 and 708 of Kulathukunjai Road, Chitravudhampalayam village, Dharapuram Taluk, Periyar District for the purpose of widening the road and for extension of the drainage facility and in the event of non utilising the land for the said purpose, to reassign the same to the petitioner as per the Board of Revenue Standing Orders 90(32).

2. The grievance of the writ petitioner was that he was the owner of the lands in the above referred to survey numbers. The lands were acquired for the purpose of construction of school by respondents 1 and 2. After completion of the acquisition proceedings, possession was handed over to the second respondent. For the reasons best known to them, the respondents did not utilise the lands for the purpose for which it was acquired. The writ petitioner got assigned a portion of the land and the remaining land was encroached upon by the fourth respondent in the writ petition by putting up a construction thereon and obtained a licence for having a liquor shop. When the lands were acquired for the purpose of putting up a school for imparting education to the public, the statutory respondents cannot allow the fourth respondent to put up a superstructure and vend liquor. On that premise the writ petitioner came before the Court for issuance of writ of mandamus.

3. Respondents 1 and 2 contended before the learned single Judge that the appellant's husband, the fourth respondent in the writ petition filed a suit in O.S. No.187 of 1995 on the file of the District Munsif, Dharapuram and obtained an order of injunction restraining them from making any transfer of the land to any other person or even change the name in the revenue records. Due to pendency of the suit, the statutory respondents 1 and 2 were not able

to take any action, even though notice under section 182 of the District and Municipalities Act has been issued against the fourth respondent, the appellant's husband.

4. The learned single Judge, after hearing the parties disposed of the writ petition by observing that when notice under section 182 of the Act has been issued for eviction of the fourth respondent in the writ petition, interim orders granted by the Civil Court has nothing to do with the said notice. The statutory respondents would have proceeded further and would have taken further action against the fourth respondent. Thus, the authorities were directed to take suitable action, particularly when they were not prohibited from taking any action pursuant to the notice issued by them. The appellant got impleaded as fifth respondent after the death of the fourth respondent - husband.

5. Before the learned single Judge, there was no representation on behalf of the appellant, the fifth respondent. The fifth respondent filed the present appeal against the order of the learned single Judge on the premise that her husband, the deceased fourth respondent purchased 1546 sq. ft. in T.S. No.705/1, 706, 707, 708 in the year 1995. He was the legal owner. He was not a party to the land acquisition proceedings. In such circumstances of the case, acquisition proceedings would not bind the fourth respondent and consequently, the appellant herein. In the stated circumstances, the direction given by the learned single Judge to the statutory respondents to proceed further pursuant to the notice cannot be legally sustained and has to be set aside.

6. We heard the learned counsel on either side and perused the materials available on record.

7. The lands have been acquired and the award has been passed as early as 18.04.1946 in Award No.1/1946. It is the admitted case of the appellant also that the survey numbers, which are the subject matter of the writ petition has been shown to be owned by Rajagopal Naidu, and in the award he has been shown as the owner of the land. It is also an undisputed fact that the respondents have taken possession of the property. It is seen from the grounds of appeal that the appellant's husband has purchased an extent of 1546 sq. ft., in T.S. Nos.705/1, 706, 707 and 708 in the year 1995 and thereupon filed a suit before the District Munsif Court in O.S. No.187 of 1995 not to transfer the revenue records in favour of any other person.

8. After passing of the award under the provisions of the Land Acquisition Act, the property vests with the Government. It is a settled proposition of law that after vesting the land so acquired for the public purpose, it could very well be used for another public purpose. However, it cannot be allowed to be encroached upon as done in this case by the respondent authorities. (vide Daulat Singh Surana v. First Land Acquisition Collector, JT 2007 (1) SC 24. Rightly, the respondents authorities have issued notice under the

District Municipalities Act. Mere filing of the suit in the year 1995 praying not to transfer the revenue register in the name of anybody else by the deceased husband of the appellant in the year 1995, on the face of it appears to be something beyond the meeting of the eyes. Though in the writ petition the prayer has been differently couched, to put the land for the particular public purpose or reassign the same to the appellant, the learned single Judge has not granted the prayer, rightly, in our opinion, and directed the authorities to proceed further to take action against the encroachers and recover the land. The appellant has not made out any extraordinary case for interference. The appeal fails and it is accordingly dismissed. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

ksh/mf

To

1. The Director of Municipal Administration,
Chennai 600 005.
2. Dharapuram Municipality, represented
by its Special Officer, Dharapuram,
Erode District.
3. The Divisional Excise Officer,
Dharapuram, Erode District.

+1cc to Govt. Pleader Sr 73960
+1cc to Mr.V.N.Mohan Raj, Advocate Sr 73942
+1cc to Mr.M.Sathyannarayanan, Advocate Sr 74130
+1cc to Mr.N.Subbarayalu, Advocate Sr 74258

ASM (CO)
km/5.1.

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